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July 21, 2008

**TO: Mail Stop Amendment
Commissioner for Patents****FROM: Steven J. Helmer
(Reg. No. 40,475)****TELE. NO.: 650.631.3244****FAX NO.: (571) 273-8300****FAX NO.: 650.620.6395****RE: U.S. Serial No: 10/738,912****Attorney Docket No.: 0127.00****TOTAL NO. OF PAGES INCLUDING COVER: 5**

DOCUMENTS SUBMITTED:

- Transmittal Form (1 page)
 - Election with Traverse (3 pages)
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JUL 21 2008

PTO/SB/21 (01-08)

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TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/738,912
	Filing Date	December 16, 2003
	First Named Inventor	Herman E. SNYDER
	Art Unit	3752
	Examiner Name	J. BOECKMANN
Total Number of Pages in This Submission	Attorney Docket Number	0127.00

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks It is believed that no fees are due for timely consideration of this paper. In the event that any fees are required, the Commissioner is hereby authorized and requested to charge Deposit Account No. 50-0348.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Nektar Therapeutics		
Signature	<i>Steven J. Helmer</i>		
Printed name	Steven J. Helmer		
Date	July 21, 2008	Reg. No.	40,475

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Signature	<i>Tina M. Ingrande</i>		
Typed or printed name	Tina M. Ingrande	Date	July 21, 2008

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JUL 21 2008

PATENT
Attorney Docket No. 0127.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Snyder et al.

APPLICATION NO.: 10/738,912

FILED: December 16, 2003

FOR: PREFILMING ATOMIZER

EXAMINER: J. Boeckmann

ART UNIT: 3752

CONF. NO.: 8356

ELECTION WITH TRAVERSE

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement mailed June 19, 2008, Applicants elect the invention of Group III (claims 17-26), with traverse.¹

The Restriction Requirement should be withdrawn because there is no serious search burden. In M.P.E.P. Chapter 800, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. § 121. Section 803 states that "[i]f the search and examination of all claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to distinct or independent inventions."

Although Groups I-III differ in that Group I is directed to a method of forming droplets, Group II is directed to a method of forming a pharmaceutical formulation, and Group III is directed to an atomizer for forming droplets, the underlying concepts are quite similar. Thus, a search for the atomizer of Group III should cover areas relevant to the methods of Groups I and II. In other words, for examination purposes, if a search area were relevant to the atomizer of Group III, it would also be relevant to the methods

¹ Applicants note that claim 26 was not included in any of the Groups of the Restriction Requirement. Applicants submit that atomizer system claim 26 should be included in Group III.

Attorney Docket No. 0127.00

of Groups I and II. Conversely, if a search area were relevant to Groups I and II, it would be relevant to Group III. Therefore, as a practical matter, the searches for the Groups should significantly overlap. Thus, the search burden would not be serious.

Furthermore, as the Examiner appreciates, in order to justify a requirement for restriction the difference between the inventions defined by the various groups of the claims must be material. Despite this requirement, although the Examiner has characterized the noted difference as being material, the Examiner has not stated or offered a definition of what is "materially different" to justify a requirement for restriction, or offered an explanation as to why the mentioned differences are material for restriction requirement purposes.

Absent an explanation of this concept, it is respectfully submitted that the Examiner has not explained how such a difference is sufficiently "materially different" so as to justify the Restriction.

It is also important for the Examiner to understand that Applicants have paid a filing fee for an examination of all the claims in this application. If, however, the Examiner refuses to examine all the claims paid for when filing this application and persists in requiring Applicants to file divisional applications for each group of claims, the Examiner is essentially forcing Applicants to pay duplicative fees for the non-elected or withdrawn claims.

As a final note, even if the restriction requirement is maintained, if atomizer claims are found to be patentable, withdrawn process claims which include the recitations of the atomizer claims should be rejoined. The Examiner is reminded that M.P.E.P. § 821.04 states:

However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of an allowable product claim will be rejoined.

Thus, if atomizer claims are found to be allowable, the process claims of Groups I and II which include the atomizer recitations of the allowed claims should be rejoined.

Attorney Docket No. 0127.00


In view of the lack of a serious burden and the lack of material differences between the Groups, Applicants respectfully request that the Restriction Requirement be reconsidered and withdrawn. Applicants also request that even if the restriction requirement is initially maintained, if the atomizer claims are found to be allowable, the process claims which have the recitations of the allowed atomizer claims should be rejoined.

If the Commissioner believes one or more fees are due, the Commissioner is hereby authorized to charge any additional fees to Deposit Account No. 50-0348.

If a telephone conference would expedite the prosecution of the subject application, the Examiner is requested to call the undersigned at (650) 631-3244.

Respectfully submitted,
Nektar Therapeutics

Date: 21 Jul 08


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